EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

85-191

No.

Supreme Court, U.S.
FILED
JUL 30 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term,

ERNEST R. ZERMAN and EVELYN ZERMAN

Appellants,

vs.

AVANT GARDE CONDOMINIUM ASSOCIATION,INC.,

Plaintiff-Appellees,

vs.

HALDALE CORP, DAVIDSON CORP, CYNTHIA CORP, MELCO CORP, ELROD CORP, SYDNEY WOLOFSKY,MEL SCHUSTER, JACK AXELROD, KENNETH WOLOFSKY, SABINA WOLOFSKY, ESTHER WOLOFSKY, PETER WOLOFSKY, RUTH WOLOFSKY,

Defendants-Appellees.

JURISDICTIONAL STATEMENT APPENDIX

Ernest R. Zerman and Evelyn Zerman
Pro Se Appellants
2049 Ocean Dr.#1403
Hallandale, Fl 33009
(305) 456-1404

APPENDIX A-APPEAL REINSTATEMENT DENIED.

IN THE SUPREME COURT OF FLORIDA

WEDNESDAY, MAY 1, 1985

ERNEST R. ZERMAN and EVELYN ZERMAN,	:	CASE NO.66,709
Petitioners/Appellants,	:	District Court of Appeal, 4th District NO. 83-2138
vs.	:	
AVANT GARDE CONDOMINIUM ASSOCIATION, INC., ET AL.,	:	
Respondents/Appellees.	:	

On consideration of the motion to reinstate appeal filed by appellants,

IT IS ORDERED by the Court that said motion be and the same is hereby denied

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

APPENDIX A.1-CLERK'S DECISION BY LETTER ZERMANS **NOT** ENTITLED TO RE-HEARING ON REINSTATEMENT OF APPEAL DISMISSED BY HIM.

" SUPREME COURT OF FLORIDA

Tallahassee 32301

May 13, 1985

"Ernest R. and Evelyn Zerman
2049 Ocean Drive,#1403
Hallandale, Florida 33009

Re: Ernest R. Zerman, et ux. v. Avant Garde Condominium Assoc., Inc., et al., Case No. 66,709

Dear Mrs. and Mrs. Zerman:

Enclosed please find your motion for rehearing en banc which is being returned herewith. You are not entitled to a rehearing on a reinstatement denial.

Most cordially,

Sid J. White
Sid J. White
Clerk Supreme Court

SJW:dec
Enclosures
cc: Robert L. Floyd, Esquire
Richard Burton, Esquire "

APPENDIX B-CLERK'S DISMISSAL OF APPEAL.

IN THE SUPREME COURT OF FLORIDA

MONDAY, MARCH 18, 1985

ERNEST R. ZERMAN and EVELYN ZERMAN,	:	
Petitioners/Appellants,	:	CASE NO.66,709
vs.	:	District Court of Appeal, 4th District NO.83-2138
AVANT GARDE CONDOMINIUM ASSOCIATION,INC., ET AL.,	:	
Respondents/Appellees.	:	

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed and no motion for rehearing will be entertained by the Court.

It appearing to the Court that the District Court of Appeal, Fourth District, did not declare invalid a State Statute or a provision of the State Constitution,and that therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion filed within fifteen(15) days from the date of this order. See Article V, Section 3(b)(1), Florida Constitution.

APPENDIX C-PER CURIAM AFFIRMED DECISION OF 4th DCA THE BASIS FOR CLERK'S DISMISSAL OF ZERMANS' APPEAL, ONLY BECAUSE PCA DECISION WAS WITHOUT AN OPINION

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT JULY TERM 1984

ERNEST R. ZERMAN and EVELYN ZERMAN,

Appellants,

v.

AVANT GARDE CONDOMINIUM ASSOCIATION INC., a Florida corporation, ABRAHAM MESCHKOW and RUTH MESCHKOW, his wife individually and on behalf of all unit owners similarly situated, HALDALE CORP, DAVIDSON CORP, CYNTHIA CORP, MELCO CORP, ELROD CORP, SYDNEY WOLOFSKY, MEL SCHUSTER, JACK AXELROD, KENNETH WOLOFSKY, SABINA WOLOFSKY, ESTHER WOLOFSKY, PETER WOLOFSKY, BETH WOLOFSKY,

Appellees.

CASE NO. 83-2138.

Decision filed January 4, 1985.

Appeal from Circuit Court for Broward County; J. Cail Lee, Judge.

PER CURIAM. AFFIRMED

ANSTEAD, C.J., DELL and WALDEN, JJ., concur.

APPENDIX D-DENIAL OF PETITION FOR WRIT OF MANDAMUS.

SUPREME COURT OF FLORIDA

MONDAY, MAY 20, 1985

ERNEST R. ZERMAN, :

Petitioner, : CASE NO. 66,800

vs. :

SID J. WHITE, Clerk of the Supreme Court, et al., :

Respondents. :

Upon consideration of the Petition for Writ of Mandamus, it is ordered by the Court that said petition be and the same is hereby denied.

ADKINS, ACTING C.J., OVERTON, ALDERMAN, McDONALD and EHRLICH, JJ., Concur.

A True Copy

TEST:

Sid J. White
Sid J. White
Clerk Supreme Court

cc: Mr. Ernest R. Zerman
Robert L. Floyd, Esquire
Richard Burton, Esquire

APPENDIX-E.1-NOTICE OF APPEAL TO SUPREME COURT OF FLORIDA (Filed 7/8/85) (Mailed 7/1/85)

IN THE SUPREME COURT OF FLORIDA

ERNEST R. ZERMAN, et al., Appellants,	:	CASE NO. 66,709
vs.	:	CASE NO. 66,800
AVANT GARDE CONDOMINIUM ASSOCIATION, INC., and HALDALE CORP, DAVIDSON CORP, CYNTHIA CORP, MELCO CORP, ELROD CORP, AND SYDNEY WOLOFSKY, MEL SCHUSTER, JACK AXELROD, KENNETH WOLOFSKY, SABINA WOLOFSKY, PETER WOLOFSKY, Appellees.	:	NOTICE OF APPEAL

NOTICE OF APPEAL

NOTICE IS HEREBY given that Ernest R. Zerman, appellant pro se, hereby appeals to the Supreme Court of the United States from an Order of the Supreme Court of Florida, dated May 1, 1985, case No.66,709, Denying Ernest R. Zerman's Motion to re-instate appeal DISMISSED BY Clerk Sid J. White. Zerman filed a non-discretionary appeal under Art.V,section 3(b)(1), which provides that Florida Supreme Court shall hear appeals from decisions of District Courts

DECLARING INVALID A STATE STATUTE, and here, at issue, is the DECLARING INVALID BY THIS HIGHEST STATE COURT, in Fleeman v. Case, 342 So.2d 815, of FSA 711.236,now 718.401.

NOTICE IS ALSO HEREBY GIVEN that Ernest R. Zerman, petitioner, pro se, hereby appeals to the U.S.Supreme Court, from an Order of this Court in case No. 66,800, dated May 20, 1985, Denying his petition for issuance of Writ of Mandamus, based on UNCONSTITUTIONALITY of this Court's appellate procedures in having Clerk administratively DISMISS APPEALS BOTH DISCRETIONARY AND NON-DISCRETIONARY AND FORBID REHEARING OF HIS DECISIONS, where a Fl.District Court of Appeal, makes a PCA decision WITHOUT OPINION.

Jurisdiction is invoked under 28USC1257.

Dated: July 1, 1985 Ernest R. Zerman
Ernest R. Zerman Pro Se
2049 Ocean Dr.#1403,Hallandale,Fl 33009

I hereby certify that a copy of this appeal was mailed on 7/1/85 to Robert Floyd, atty for Wolofskys, One Biscayne Tower,Miami,Fl 33131; to Richard Burton,atty for Avant Garde 3510 Biscayne Blvd,Miami,Fl 33137.

Ernest R. Zerman
Ernest R. Zerman

APPENDIX-F EXACT COPY OF NOTICE OF SHERIFF SALE TRIAL CASE NO.81-6024. ZERMANS NOT PLAINTIFFS NOR DEFENDANTS AND WERE NOT HEARD IN OPPOSITION TO FORECLOSURE OF THEIR HOME, UNIT 1403 OR ALLOWED HEARING.

NOTICE OF SALE
PURSUANT TO CHAPTER 45

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR BROWARD COUNTY
CIVIL ACTION NO. 81-6024
(LEE)

AVANT GARDE CONDOMINIUM ASSOCIATION, INC., a Florida corporation, et al.,
Plaintiff

-vs-

HALDALE CORP., et al.,
Defendant

NOTICE IS HEREBY GIVEN pursuant to an Order or Final Judgment of foreclosure dated **October 28, 1983**, and entered in Case No. **81-6024 (LEE)** of the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida wherein **AVANT GARDE CONDOMINIUM ASSOCIATION, INC., a Florida corporation, et al.,** plaintiffs, and **HALDALE CORP., et al.,** are defendants, I will sell to the highest and best bidder for cash in the lobby of the Broward County Courthouse in Fort Lauderdale, Broward County, Florida at 11:00 o'clock A.M. on the **6th** day of **December 1983**, the following described property as set forth in said Order or Final Judgment, to-wit:

UNIT NO. 1403E, of AVANT GARDE CONDOMINIUM according to the Declaration of Condominium thereof, as recorded in Official Records Book 5913 at Page 325 of the Public Records of Broward County, Florida

Dated at Fort Lauderdale, Florida this 2 day of **November 1983.**

ROBERT E. LOCKWOOD
As Clerk, Circuit Court
Broward County, Florida

APPENDIX-G.1-INTERVENTION MOTION BY ERNEST R. ZERMAN (12/1/82 R67-69) TO VOID 99 YEAR AVANT GARDE CONDO REC LEASE'S ESCALATION CLAUSE UNDER FSA 718.401(8). DENIED R85-87.

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

AVANT GARDE CONDOMINIUM ASSOCIATION, INC.,et al.,	CASE NO.81-6024
Plaintiffs,	INTERVENTION MO- UNDER RULE 1.230
vs.	BY ERNEST R.ZER- MAN AS PLAINTIFF
HALDALE CORP., et al.,	...VOIDING AVANT GARDE CONDOMINIUM
Defendants.	REC LEASE ESCALATION CLAUSE

Ernest R. Zerman, Unit Owner of 1403 condo Unit East of Avant Garde Condominium, plaintiff in suit #79-6651-CIV-JAG United States District Court referred to in EXHIBIT H of settlement agreement and plaintiff in suit referred to in EXHIBIT B 5., Moves for leave to intervene as an individual plaintiff in above styled action on the ground that he has a claim against the defendants to VOID the 48% escalation of rec lease rents of Avant Garde on 2-1-79 which illegal escalation was tied to the CONSUMER

PRICE INDEX contrary to Florida Statute FSA 718.401(8), whereby the annual rents of Avant Garde Net Rec Lease was illegally increased from $135,000.00 to $199,000.00 annually on 2-1-79.

Ernest R. Zerman's INTERVENTION as individual plaintiff and MOTION for partial summary judgment TO VOID THE AVANT GARDE REC L LEASE ESCALATION CLAUSE TIED TO THE CONSUMER PRICE INDEX will not unduly prejudice the adjudication of the rights of the original parties.

The Motion....is based on all the ... records, including...recorded documents filed in Broward County...Avant Garde Declaratio n with EXHIBITS, OFF.REC. 5913 p 325 et seq, Rec Lease 5913 p 400, and ... Official Assessment for Avant Garde RECREATIONAL FACILITIES SHOWING TRUE VALUE of $239,370. for which plaintiffs are paying $1,790,000.00 plus $80,000.00 expenses.

APPENDIX-H.1 **COUNT I OF COMPLAINT** BEING(R.1-15) of RECORD IN 17th CIRCUIT CASE No.81-6024(LEE) PUTTING IN ISSUE VALIDITY AND CONSTITUTIONALITY OF FSA718.401(8)=711.236.

AVANT GARDE CONDOMINIUM ASSOCIATION., et al.,

Plaintiffs,

vs.

HALDALE CORP., et al.,

Defendants.

: COMPLAINT

. . . . .

COUNT I

STATUTORY

21. Paragraphs 1 through 20 are realleged and reaffirmed.

22. Sections 718.302(2) and 718.404 F.S. require all recreation leases made by an association, prior to assumption of control of the association by non-Developer unit owners to be "fair and reasonable".

23. The lease is not fair and reasonable.

24. Sections 718.302(3) and 718.401(8),F.S. declare the public policy of the State of

Florida to prohibit "inclusion or enforcement of escalation clauses in leases for recreation facilities" and the clauses have been statutorily "declared void for public policy."

25. The Lease contains a prohibited escalation clause (Article V) which is void.

26. Section 718.122, F.S., declares a recreation lease containing the lollowing nine elements to be presumptively unconscionable:

(a) The lease was executed by persons none of whom at the time of the execution of the lease were elected by condominium unit owners other than the developer, to represent their interests;

(b) The lease requires either the condominium association or the condominium unit owners to pay real estate taxes on property.

(c) The lease requires either the condominium association or the condominium unit owners to insure the leased property.

(d) Maintenance-Article XVI and Article VIII of the lease;

(e) Terms of Lease greater than 21 years.

(f) Pledge Unit - Article XXV of lease.

(g) Annual lease payment greater than 25% of appraised value of leased property here;(para.14(c) and 14(g) of this complaint.

(h) Mandatory lease - Article XXVII of lease.

The lease is presumptively unconscionable.

28. The lease by its own terms, and the escalation clause are unfair and unreasonable, and are violative of Sections 718.302(3) and 718.401(8), F.S.

COUNT II

UNCONSCIONABILITY ---ESCALATION CLAUSE

.....

31. Individual and Corporate Defendants devised and used the Association, a Florida corp not-for-profit, to reap unconscionable profits and as a mechanism by which to impose upon the unit owners an unfair,unreasonable, unconscionable and unlawful lease. The Association had an original identity solely for enrichment of individual and corporate defendants.

APPENDIX-I.1,PURCHASE AGREEMENT DATED 11/2/82 (R 31-61) ALLEGEDLY PER COURT'S APPROVAL (R 85-87),OBJECTED TO BY ZERMAN,CLASS OF 278 CONDO UNIT OWNERS WERE SERVED AND APPROVED THE PURCHASE OF REC LEASE ESCALATION CLAUSE FOR OVER $1,500,000.
TRUE VALUE OF PROPERTY $239,370.,SUBTRACTED FROM $1,790,000 LEAVES $1,500,000.00 FOR VOID ESCALATION CLAUSE,FSA718.401(8).

PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into this 2nd day of November, 1982 by and between ELROD CORP., a Florida corporation, KENNETH WOLOFSKY, PETER WOLOFSKY, SYDNEY WOLOFSKY AND MEL SCHUSTER (Zerman's note- on 8/28/74 Sydney and Mel signed lease as LESSEE and as officers of Avant Garde Condominium Ass'n) and AVANT GARDE CONDOMINIUM ASSOCIATION, INC, (hereinafter referred to as "Buyer").

.....

NOW THEREFORE, in consideration of these premises, mutual covenants ....

2. Buyer agrees to purchase, and Seller agrees to sell, the Property and all of the personal property and improvements located upon the Property for a purchase price of $1,790,000.00 on the closing date .....

FAILURE OF CONSIDERATION & EXCULPATION CLAUSE
PURCHASE AGREEMENT(R 31-61) page 7,para.8c.
Buyer acknowledges unto Seller that full and adequate consideration has moved from Seller to Buyer for the releases herewith given, SUCH CONSIDERATION INCLUDING THE OPPORTUNITY AFFORDED TO BUYER TO PURCHASE THE PROPERTY - (Broward County assessment put true value of Recreational facilities property, in 1982, including land and buildings at $239,370.)- and to avoid the provisions in the LONG TERM (99 years) LEASE FOR THE INCREASE IN FUTURE RENTAL PAYMENTS PROVIDED FOR THEREUNDER, (note- 5 year escalation of rents tied to Consumer Price Index, which is illegal under FSA 718.401(8), WHETHER OR NOT THE SAME SHALL BE ALLOWABLE OR ENFORCEABLE UNDER LAW and for other benefits accruing to Buyer from the ownership of Property.

APPENDIX-J. BELOW IS PART OF PUBLIC RECORD, BROWARD COUNTY-OFF REC5913PAGES 420,421-8/28/74 EXECUTION PAGES OF AVANT GARDE RECREATION LEASE, SYDNEY WOLOFSKY SIGNING AS BOTH LESSEE AND LESSOR.

LESSEE:

AVANT GARDE CONDOMINIUM ASSOCIATION,

By: _____
President
SYDNEY WOLOFSKY

ATTEST: _____
Secretary
MEL SCHUSTER

RECORDED IN OFFICIAL RECORDS BOOK 5913 PAGE 420

AVANT GARDE CONDOMINIUM ASSOCIATION, INC. (Corporate Seal) 1972 FLORIDA

21

LESSOR:

HALDALE CORP.

(SEAL)

By: _____
President
SYDNEY WOLOFSKY

Attest: _____
Secretary

APPENDIX- EXACT COPY OF PUBLIC RECORD, OFF/REC 8646 page 203, OF DEED WHEREBY SYDNEY WOLOFSKY SOLD REC LEASE TO HIMSELF FOR TEN DOLLARS ($10.00) TOTAL CONSIDERATION.

Warranty Deed

(Individual (Will C.

79-397392

This Indenture, Made the 31ST day of December , A.D. 19 75

between HALDALE CORPORATION , a corporat

existing under the laws of the State of Florida , having its principal place

of business in the County of Broward and State of Florida

and lawfully authorized to transact business in the State of Florida, party of the first part, and

SYDNEY WOLOFSKY
[redacted]
Coral Gables, Florida

the County of Dade and State of Florida

party of the second part Witnesseth:

That the said party of the first part, for and in consideration of the sum of ten and no/100 Dol

in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged has grant

bargained and sold to the said party of the second part, his heirs and assigns forever, the following descri

property, lying and being in the County of Broward and State of Florida, to-

See Rider attached hereto
for legal description of property
being conveyed hereunder

STATE OF FLORIDA
DOCUMENTARY STAMP TAX
DEPT. OF REVENUE
PD. 00.40
10145

And the said party of the first part does hereby fully warrant the title to said land, and will defend

the same against the lawful claims of all persons whomsoever.

In Witness Whereof, the said party of the

first part has caused these presents to be signed in its name

by its proper officers, and its corporate seal to be affixed, at

tested by its secretary, the day and year above written.

(Corporate Seal)

SYDNEY WOLOFSKY Secretary

HALDALE CORPORATION

Signed, sealed and delivered in presence of us:

SYDNEY WOLOFSKY President

APPENDIX- EXACT COPY OF PART OF PUBLIC RECORD, O/R10852pg21, OF DEED, REV.STAMPS $8261 FOR $1,790,000, WHEREBY SYDNEY WOLOFSKY, CANADIAN DEFENDANT WHO BOUGHT LEASE FOR $10 FROM HIMSELF SOLD REC LEASE WITH VOID FSA 718.401(8) ESCALATION CLAUSE TO 278 CONDO UNIT OWNERS FOR $1,790,000.00 .

8261 50

Doc. Stamps

SPECIAL WARRANTY DEED

83-143837

THIS SPECIAL WARRANTY DEED made this 7th day of A.D. 1983 by ELROD CORP., a Florida corporation, and KENNETH WOL PETER WOLOFSKY, SYDNEY WOLOFSKY, and MEL SCHUSTER, all marri with a mailing address at _____, her collectively called the "Grantor", to AVANT GARDE CONDO ASSOCIATION, INC., a Florida non-profit corporation, whose office ad 2017 So. Ocean Dr. Hallandale Fla., hereinafter calls "Grantee" (wherever used herein the terms "Grantor" and "Grantee" include parties to this instrument and the heirs, legal representatives and as individuals, and the successors and assigns of corporations):

WITNESSETH: That the Grantor, for and in consideration of the Ten Dollars ($10.00) and other valuable considerations, receipt whereof is acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conv confirms unto the Grantee, all that certain land situate in Broward County, viz:

Recreation Condominium Units B, C, D, and E in the East Building and F, G, H and I in the West Building of AVANT GARDE CONDOMINIUM, according to the Declaration of Condominium thereof recorded at Official Records Book 5913, Page 325, of the Public Records of Broward County, Florida; and

Outside Recreation Facilities Area A, not a part of the Condominium property, and more particularly

APPENDIX-K-HALLANDALE'S 40,000 Citizens Cut-Off from ACCESS TO SUPREME COURT BY NO OPINION DECISION OF DISTRICT COURT OF APPEAL

A letter, dated July 22, 1985, which City Attorney Richard Kane addressed to Attorney Ira M. Elegant, representing the Posner interest, appears to set the stage for a final agreement, ending the "City-Posner" litigation which began in 1971.

This action on Kane's part came within the 30 days prescribed by Order of Circuit Court Judge Otis Farrington, for agreement among the parties, dated December 19, 1984.

So dated, except for the City of Hallandale's action to appeal the Order to the Fourth District Court of Appeals in West Palm Beach, Florida. The Appeals Court ruled against the City on June 5, 1985.

The Hallandale City Commission's outside Counsel, John Fletcher, advised the Commission that it could "not appeal" the District Court of Appeals Order, to a higher Court, because the Order was a "no-opinion" decision, adding that the Florida Supreme Court will not take jurisdiction on a lower Court's "no-opinion" decision.

In other words, the City of Hallandale had no further avenue to up-set Judge Farrington's Order of December 19th.

City Attorney Kane's letter of July 22, 1985, succinctly [illegible] the current position of Posner's representative, "Acmar Engineering Corporation," which originally filed an appliction seeking the City's permit to build the 1500 unit, five building, condominium apartment complex on the 13 acre "Posner Tract", on South Ocean Drive, known as the "Five Continents."

The full text of City Attorney Kane's letter to Attorney Elegant, is as follows:

"In accordance with the order of court dated November 19, 1984, the City has reviewed the amended plans and identified deficiencies in some matters that were contained in the list of June 24, 1983, and some additional deficiences that have been created by changes made subsequent to November 19, 1984.

"We would like to meet and confer on the deficiencies in an attempt to reach agreement to bring the plans into conformance with the building code. (Parenthetically, sheet E-24 was not supplied and you may want to send that immediately.)

"Kindly make arrangements for the architect and the contractor who has applied for the permit to meet with City staff at your earliest convenience. We would then review the deficiencies